

MARKED-UP CLAIMS

1. (rewritten) A light analyzer apparatus for use with an ampoule, comprising:
  - a) a housing having a receptacle which receives the ampoule;
  - b) a light source which transmits light at a first intensity level into said receptacle, said light being transmitted axially through said receptacle;
  - c) a detector which detects at least some of said light transmitted [into] axially through said receptacle; and
  - d) a control means for automatically determining when said light detected is at a predetermined percentage of said first intensity level of said light, said control means including a memory provided with a look-up table relating a time required for performing a test on the ampoule in said apparatus and a biological activity in the ampoule at a start of the test.

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AMENDMENT TO CLAIMS

Please rewrite claim 1, as follows:

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1. (rewritten) A light analyzer apparatus for use with an ampoule, comprising:

- a) a housing having a receptacle which receives the ampoule;
- b) a light source which transmits light at a first intensity level into said receptacle, said light being transmitted axially through said receptacle;
- c) a detector which detects at least some of said light transmitted axially through said receptacle; and
- d) a control means for automatically determining when said light detected is at a predetermined percentage of said first intensity level of said light, said control means including a memory provided with a look-up table relating a time required for performing a test on the ampoule in said apparatus and a biological activity in the ampoule at a start of the test.

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SECOND REQUEST FOR RECONSIDERATION

Claims 1-4, 6-15 and 17-26 are pending in the application. Claims 15 and 17-22 have been allowed.

The Examiner, in response to the prior Request for Reconsideration (mailed Feb. 10, 2003), stated that "it is not important in what direction the light passes through the sample, and it is a matter of obvious design and expedience to direct the light through the sample in any convenient direction." This conclusion is respectfully traversed. In the Specification, at page 18, lines 7-16, a clear and distinct advantage for transmitting light axially through the sample is recognized which was not recognized in the prior art:

[I]t is noted that the samples in some ampoules under test may contain microbes that form various films at different levels within the ampoule; i.e., a stratification of the sample. As such, the axial embodiment is preferred as it eliminates any artifacts caused by stratified layers. In addition, the axial measurement embodiment permits the light to be transmitted through about four inches of the sample water, as opposed to about 0.5 inch of water with the transaxial mode. The larger amount of sample water provides a proportionally denser color change when the indicator changes color.

Claim 1 has been amended to require that the light transmitted by the light source be transmitted axially through the receptacle, and that the detector detects at least some of the light axially transmitted through the receptacle. Thus, it is submitted that claim 1 and all claims dependent thereon (claims 2-4 and 6-14) are now in condition for allowance.

Moreover, claims 23-26 already contain limitations with respect to the axial transmission of light through the receptacle/sample. Claims 23 and 24 require "said detector and said light source being located on *axially opposite* sides of said receptacle." In addition, claims 25 and 26 both require "transmitting light at a predetermined wavelength *axially* through said ampoule." Thus, it is submitted that these claims are also in condition for allowance.

In view of the above, the pending claims are now in condition for allowance over the art of record.

Further to a telephone conversation with the Examiner on April 21, 2003, with respect to the potential of an obviousness-type double patenting rejection over grandparent case U.S. Pat. No. 6,493,085, the attorney for applicant has reviewed the claims in that case and notes the following. The claims of the grandparent case contain specific limitations with respect to a movable cover which functions to prevent ambient light from entering the receptacle and a reflective surface which reflects light toward a light detector and, in claim 15, the longitudinal axis of the receptacle, which is at an angle relative to vertical when the system is resting on the surface.

Furthermore, the claims of the present case include specific limitations which are not obvious over the claims of the grandparent case. In particular, claims 1, 23 and 24 require "a control means for automatically determining when said light detected is at a predetermined percentage of said first intensity level of said light". Moreover, the

method limitations of claims 25 and 26 are not obvious over the apparatus claims of the grandparent case.

For the foregoing reasons, it is submitted that the case is in condition for allowance. However, if the Examiner believes that a double-patenting rejection is warranted, it is respectfully requested that the requirement for a terminal disclaimer be presented to the attorney for applicant prior to May 9, 2003 so as to limit the extension fees to the client.

Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,



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April 21, 2003